

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL MARINO,
Plaintiff,

v.

USHER, et al.,
Defendants.

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Civ. No. 11-6811

ORDER

AND NOW, this 9th day of September, 2014 it is hereby **ORDERED** that:

1. In opposing sanctions, Mr. Malofiy, acting through counsel, alleged (without providing any evidentiary support) that he is unable to pay fees and costs and that the imposition of sanctions might “have negative effects and prevent Mr. Malofiy from continuing to practice law.” (Doc. No. 165.)
2. On August 28, 2014, I issued my decision, imposing fees and costs on Mr. Malofiy. (Doc. No. 188.) I allowed Defendants to take discovery as to Mr. Malofiy’s ability to pay. (Id.)
3. Mr. Malofiy has now advised me that because he “has the ability to pay” the fees and costs I have imposed, there is no need for Defendants to take discovery with respect to Mr. Malofiy’s finances. (Doc. No. 189.) He also asks me to lift the stay of that Order.
4. Accordingly, it is hereby **ORDERED** that Mr. Malofiy shall, within forty-five (45) days, pay the fees and costs as set out in my August 28, 2014

Order. (Doc. No. 188.)

5. In asking me to lift the stay, Mr. Malofiy also asks that I enter a “final [o]rder,” so that he can appeal the imposition of sanctions. (Doc. No. 189.) I have not, however, entered a final judgment on the merits of this case. Accordingly, until the underlying litigation is resolved, it does not appear that I can issue the final order that Mr. Malofiy requests. See, e.g., Berkeley Inv. Group, Ltd. v. Colkitt, 259 F.3d 135, 145 (3d Cir. 2001) (appeal of partial summary judgment premature “until the District Court enters final judgment as to all parties and claims or chooses to make an express determination that there is no just cause for the delay of the appeal of the entry of summary judgment”).

IT IS SO ORDERED

/s/ Paul S. Diamond

September 9, 2014

Paul S. Diamond, J.